

SOAH DOCKET NO. 582-06-0425
TCEQ DOCKET NO. 2005-1516-UCR

APPLICATION OF TAPATIO SPRINGS §
SERVICE COMPANY, INC., §
TO AMEND CERTIFICATES §
OF CONVENIENCE AND NECESSITY §
NOS. 12122 AND 20698 IN KENDALL §
COUNTY, TEXAS §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

RATEPAYERS MOTION TO REOPEN THE RECORD

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Ratepayers request the Commissioners of Texas Commission on Environmental Quality (TCEQ) reopen the record for this matter. Ratepayers argue that Findings of Facts and Conclusions of Law submitted by the Administrative Law Judge (ALJ) are incorrect. In Ratepayers Brief Filed In Response To SOAH Proposal For Decision and Exceptions, sworn affidavits were attached and arguments were made regarding TCEQ's designation of Priority Groundwater Management Areas. The ALJ, via a letter to TCEQ General Counsel, urges that the information be struck from the record and no consideration be given to those facts. Sworn affidavits and TCEQ actions should be a part of this record. The exclusion of this information has a detrimental effect on the Ratepayers and are integral to the Commission's decision on the amendment application. Ratepayers recommend the record be reopened.

TEXAS ADMINISTRATIVE CODE

The Commission may order the judge to reopen the record in accordance with RULE §80.265 TEX. ADMIN. CODE. As the evidence sought to be recognized is critical to

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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the decision at hand, the Ratepayers urge the Commission to reopen the record to admit the following.

GBRA AFFIDAVITS

The Ratepayers urge the Commission to reopen the record to admit the Affidavits of Guadalupe Blanco River Authority (GBRA) General Manager, W.E. West, Jr., and GBRA Director of Project Development, David Welsch W.E. West, Jr. These affidavits prove the Applicant does not have any agreement for additional water beyond their written contracts and that no additional water is available.¹ False testimony was given by the Applicant when TCEQ Executive Director asked about adequate water availability. The Executive Director specifically asked if the Applicant could increase the amount of water from the GBRA, the Applicant falsely testified that it could receive additional water and in fact had a verbal agreement with GBRA.² The offered affidavits establish that no additional water was available and in fact the Applicant, this very witness, had been directly informed that additional water was not available.³ This is critical to the evaluation of the application, weighing of the evidence presented and the proposed impact on the Ratepayers. The Applicant had prefiled testimony stating only 250 acre feet would be provided to the area.⁴ Ratepayers were unaware that Applicant would allege it had additional water availability. These affidavits must be included in the record.

PRIORITY GROUNDWATER MANAGEMENT AREA (PGMA)

After the evidentiary record was closed, the ALJ took official notice of the Applicant's tariff "pursuant to Texas Gov't Code § 2001.090.... Because the tariff was

¹ See Attached Exhibit A.

² Tr. 23-25.

³ Attached Exhibit A.

⁴ Tr. Ex. A-3, Prefiled Test. J. Parker, p. 5, ll. 5-22.

approved by the Commission, which is presumed to know of its own actions, taking official notice is appropriate.”⁵ Therefore it is similarly correct to take official notice that Kendall County is within the Hill County PGMA, as the TCEQ designates the PGMA.⁶ Furthermore, TEXAS ADMINISTRATIVE CODE RULE §80.127(e)(1) provides that “[t]he judge may take official notice of all facts judicially cognizable. In addition, the judge may take official notice of any generally recognized facts within the specialized knowledge of the commission.” It is proper to take official notice of this fact and to take notice of Cow Creek Groundwater Districts concern with this application.

As the ALJ recommends not taking notice of these facts, the Ratepayers request the record be reopened to offer evidence that Kendall County is in the Hill County PGMA. The Ratepayers argue that the Cow Creek Groundwater District letter sent to the TCEQ is presents the concerns of the District. Directly referring to this matter the Groundwater District stated “It is questionable that groundwater production in the amount identified is available within the proposed expanded CCN service area or that the requested groundwater could or would be permitted.”⁷ This letter further requests that the TCEQ recognize the potential impact to the groundwater district from approval of this application.⁸ All of the citizens in the area will be impacted by the proposed withdraw of groundwater. This is evidenced by the PGMA information included in the Ratepayers’ Exceptions as was submitted by the Applicant’s witness in his exhibits,⁹ and the Cow

⁵ Order No. 10, Sept. 13, 2006, Wm. G. Newchurch, ALJ, SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR.

⁶ Priority Groundwater Management Areas and Groundwater Conservation Districts, Report to 79th Legislature; TCEQ, January 2005, Table 1. (found at http://www.tceq.state.tx.us/assets/public/comm_exec/pubs/sfr/053_04.pdf).

⁷ Attached Exh. B.

⁸ Id.


⁹ TR. Ex. A-1, subex. 2.

Creek Groundwater District letter.¹⁰ As shown by that data, there is a shortage of groundwater in Kendall County.¹¹ This shortage is critical to the decision to be made by the Commission. The fact that Kendall County is in a PGMA and the limitation of the groundwater situation should be considered by the TCEQ.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Movants pray that the record be reopened to admit the previously discussed evidence as requested hereinabove and for such and further relief that may be awarded at law or in equity.

Respectfully submitted,
LAW OFFICE OF ELIZABETH R. MARTIN

By: 
ELIZABETH R. MARTIN
Texas Bar No. 24027482
106 WEST BLANCO, STE. 206
P.O. Box 1764
BOERNE, Texas 78006
Tel. (830)816-8686
Fax. (830)816-8282
Attorney for Ratepayers

CERTIFICATE OF SERVICE

I certify that on November 15, 2006, a true and correct copy of Ratepayers Motion to Reopen the Record was served via fax transmission and regular mail to all parties on the following mailing list.


ELIZABETH R. MARTIN

¹⁰ Attached Exh. B; Tr. Ex. P-6;

¹¹ Id.

**MAILING LIST - TAPATIO SPRINGS SERVICE COMPANY, INC.
SOAH DOCKET NO. 582-06-0425; TCEQ DOCKET NO. 2005-1515-URC**

GENERAL COUNSEL
Fax 1 512 239 5533

Derek Seal
Texas Commission on Environmental Quality
P.O. 13087
Austin, TX 78701

ADMINISTRATIVE LAW JUDGE
Fax 1 512 475 4994

William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearing
300 West Fifteenth Street
Austin, TX 78701

FOR THE CHIEF CLERK:
Fax 1 512 239 3311

LaDonna Castañuela
Office of the Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

FOR THE APPLICANT:
Fax 210 349 0041

Patrick Lindner
Davidson & Troilo, P.C.
7550 IH-10 West, Northwest Center, Ste. 800
San Antonio, TX 78229

FOR THE EXECUTIVE DIRECTOR:
Fax 1 512 239 0606

Kathy Humphreys Brown, Staff Attorney
Environmental Law Division, MC-173
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

FOR THE PUBLIC INTEREST
COUNSEL:
Fax 1 512 239 6377

Garrett Arthur
Assistant Public Interest Counsel, MC-175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

FOR RANGER CREEK HOA:
Fax 210 696 9675

Eric Sherer, Attorney at Law
11124 Wurzbach Road, Suite 100
San Antonio, TX 78232

Exhibit "A"

AFFIDAVIT OF W. E. WEST, JR.

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Before me, the undersigned authority, on this date personally appeared W. E. West, Jr., who after being duly sworn stated as follows:

1. My name is W. E. West, Jr. I am over the age of eighteen (18) years and I reside at 9000 FM 20, Seguin, Texas, 78155. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are all true and correct.
2. I am the General Manager of the Guadalupe-Blanco River Authority ("GBRA"), and have been since 1994. I have overall management responsibility for all of GBRA's operations and employees, and I oversee implementation of all policies and decisions of the GBRA Board of Directors. Prior to my employment with GBRA, I was employed by the Lower Colorado River Authority.
3. I have become aware of certain proposed findings relating to GBRA in an October 6, 2006 Proposal for Decision in the following matter before the State Office of Administrative Hearings ("SOAH"):

SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR; In Re: Application of Tapatio Springs Service Company, Inc. ("Tapatio") to Amend Certificates of Convenience and Necessity Nos. 12122 and 20698 in Kendall County, Texas.

4. The proposed findings at issue are as follows:
50. Tapatio has approached GBRA for additional water, and GBRA has informally, verbally agreed to provide an additional 250 ac-ft., beyond the 750 ac-ft. which it has formally contracted to provide.
51. Approximately 1,600 ac-ft is available from GBRA for private utilities in the general area.
5. Proposed Finding No. 50 is incorrect. A representative of Tapatio did make a verbal request of David Welsch, Director of Project Development for GBRA, that GBRA agree to amend its existing contract with Tapatio to increase the maximum amount of treated water to be supplied annually by GBRA an additional 250 acre-feet (from 750 acre-feet to 1,000 acre-feet annually), but at my direction Mr. Welsch responded that GBRA would *not* agree to the requested amendment. See accompanying affidavit of Mr. Welsch.

Affidavit of W.E. West, Jr.
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6. There is no basis for Proposed Finding No. 51. GBRA has made no determination that it has 1,600 acre-feet, or any other amount, of treated water available for private utilities in the area."

FURTHER AFFIANT SAYETH NOT.


W. E. West, Jr., General Manager

SWORN TO AND SUBSCRIBED before me by W. E. West, Jr. on this 26th day of October, 2006, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

My Commission Expires:

May 11, 2008

AFFIDAVIT OF DAVID WELSCH

STATE OF TEXAS §

COUNTY OF GUADALUPE §

Before me, the undersigned authority, on this date personally appeared David Welsch, who after being duly sworn stated as follows:

- "1. My name is David Welsch. I am over the age of eighteen (18) years and I reside at 202 Oldtowne, Seguin, Texas. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are all true and correct.
2. I am employed by the Guadalupe-Blanco River Authority ("GBRA") and have been since 1973. My current position is Director of Project Development.


On or about July 14, 2005, Mr. Stan Scott and Mr. Jay Parker, who represented themselves to be the managers or officers with the Tapatio Springs Service Company, Inc. ("Tapatio")/ Kendall County Utility Company, requested an increase in the original Raw Water Commitment of Water from the Western Canyon Regional Treated Water Supply System from 500 acre feet to 750 acre feet per annum. Said request was granted by the Board of Directors. Subsequent to that approval Mr. Scott and Mr. Parker verbally requested that GBRA agree to amend its contract with Tapatio/ Kendall again to increase the maximum amount of treated water to be supplied annually by GBRA by an additional 250 acre-feet (from 750 acre-feet to 1,000 acre-feet annually). At the direction of Mr. W.E. West, Jr., the General Manager of GBRA, I responded verbally to both Mr. Scott and Mr. Parker that GBRA would *not* agree to the requested additional amendment."

FURTHER AFFIANT SAYETH NOT.


David Welsch

SWORN TO AND SUBSCRIBED before me by David Welsch on this 26th day of October, 2006, to certify which witness my hand and seal of office.




Notary Public and for the State of Texas

My Commission Expires:

May 11, 2008

Exhibit “B”

Cow Creek Groundwater Conservation District

216 Market Ave., Ste. 105
Boerne, Texas 78006
(830) 816-2504 Fax (830) 816-2607
www.ccgcd.org

June 15, 2006

Mr. Doug Holcomb, MC 153
T.C.E.Q.
P. O. Box 13087
Austin, Texas 78711-3087

Dear Mr. Holcomb:

This letter is a follow up to our telephone conversation this morning concerning the expansion of the CCN service area as proposed by the Tapatio Springs Service Company in Boerne, Texas.

T.C.E.Q. currently has this CCN expansion request under consideration for possible approval. Water to supply the expanded CCN service area is proposed to come from 250 Ac.Ft. per year surface water from GBRA and from 10 proposed Trinity wells. To date no well permits have been requested through the Cow Creek Groundwater Conservation District nor have any water availability studies been provided documenting the availability of the 750 GPM proposed to be withdrawn from the Trinity aquifer. It is questionable that groundwater production in the amount identified is available within the proposed expanded CCN service area or that the requested groundwater could or would be permitted.

If T.C.E.Q. were to approve the expanded CCN service area as requested by the Tapatio Springs Service Company, based on water supply data furnished in the expansion request, does that imply that the groundwater supply wells proposed are approved and permitted without going through the approval and permitting process of the Cow Creek Groundwater Conservation District?

I appreciate your discussion of the above question and look forward to a timely response concerning permitting authorities.

Sincerely,

John C. Kight
John C. Kight, Vice President
Board of Directors

JCK/meck

